

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

CONNIE COKER

PLAINTIFF

VS.

CAUSE NO. 1:21cv182-MPM-RP

**THE KROGER CO., MO TUPELO, LLC
AND JOHN DOES 1-5**

DEFENDANTS

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, Kroger Limited Partnership I, incorrectly identified in the Complaint as The Kroger Co. (sometimes hereinafter referred to as “Kroger” or “Kroger Defendant”), by and through counsel, has removed this action pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and other applicable law, from the County Court of Lee County, Mississippi, (Cause No. CV2021-000818) to the United States District Court for the Northern District of Mississippi, Aberdeen Division. The basis for removal is diversity of citizenship.

Nature of the Civil Action Removed

1.

On October 28, 2021, the Plaintiff filed the above captioned civil action. Process was served upon the Kroger Defendant on or about November 4, 2021. This lawsuit first became removable to this Court at that time. A copy of the Plaintiff’s Complaint filed with the Circuit Clerk of the Lee County Court, Mississippi, along with all process, pleadings and orders served upon Defendant Kroger is attached hereto as **Exhibit “A”** and incorporated herein by reference.

2.

The Complaint alleges that this lawsuit arose out of an alleged door malfunction causing Plaintiff to fall at the Kroger Store located at 930 Barnes Crossing Road, Tupelo, Lee County, Mississippi. The allegation is that as Plaintiff was entering the store, “the automatic doors closed

on Plaintiff and she was pushed down,” and that Plaintiff suffered “substantial trauma and medical injuries to her hip and leg”. The Complaint simply states that Plaintiff was caused to incur medical expenses and may reasonably anticipate incurring, “future medical expenses, pain and suffering resulting mental and emotional distress”. Plaintiff simply makes a demand for an unlimited amount of damages, in excess of the minimum jurisdictional limits of the Lee County Court, together with all costs herein and interest thereon, as a result of the unsafe condition and/or acts of negligence of the Defendants.

Removal Based on Diversity of Citizenship

3.

Taking the allegations of the Complaint as true, Plaintiff is an adult resident citizen of Lee County, Mississippi.

4.

Kroger is a corporate entity formed under the laws of the State of Ohio with its principal place of business located within the State of Ohio. Based on information and belief, and after conferring with its counsel, the unrelated co-defendant, Mo Tupelo, LLC, a limited liability company, has no member that is a resident of the state of Mississippi. A limited liability company’s citizenship is that of its members. *Coast Electric Power Association v. BellSouth Telecommunications, Inc.*, 2012 WL 12969842, *1 (S.D. Miss. 2012). Therefore, the co-defendant Mo Tupelo, LLC is diverse as none of its members reside in the state of Mississippi. All Defendants required for removal have consented to and/or joined in this removal.

5.

Based on pre-suit information provided to the Kroger Defendant, Plaintiff presently has claimed medical expenses of \$288,357.37. Pursuant to 28 U.S.C. § 1332 and § 1441, this Court has original subject matter jurisdiction over the present action based on diversity of citizenship, in

that it is a civil action where the matter in controversy is between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. This amount in controversy clearly exceeds the sum of \$75,000.00 and is between citizens of different states.

6.

Pursuant to 28 U.S.C. § 1441, the United States District Court for the Northern District of Mississippi, Aberdeen Division, is the federal district court for the district and division embracing the place where the state court suit is pending.

7.

**Notice to Adverse Parties and the
Clerk of the County Court, Lee County, Mississippi**

The removing defendant hereby certifies that written notice of the filing of this NOTICE OF REMOVAL has been served upon all adverse parties and a copy will be filed with the Clerk of the County Court of Lee County, Mississippi, thereby effecting the removal of this action to this Court. Pursuant to 28 U.S.C. § 1446(d) notice is hereby given that the state court action shall proceed no further unless and until the case is remanded.

WHEREFORE, PREMISES CONSIDERED, the removing Defendant files this NOTICE OF REMOVAL with the United States District Court for the Northern District of Mississippi, Aberdeen Division, and respectfully prays that this Court will proceed with the handling of this case as if it had been originally filed herein, and that further proceedings in the County Court of Lee County, Mississippi, shall proceed no further unless and until the case is remanded thereto.

RESPECTFULLY SUBMITTED, this the 3rd day of December, 2021.

FOR: **KROGER LIMITED PARTNERSHIP I**

BY: /s/*Michael E. Phillips*
Michael E. Phillips, Esq.

OF COUNSEL:

Michael E. Phillips (MSB #100119)

Claire K. Robinett (MSB 104984)

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, do hereby certify that I have this day served a true and correct copy of the foregoing NOTICE OF REMOVAL via United States Mail, postage prepaid or VIA ECF MEC system upon the following:

Ralph E. Chapman (MSB #5962)
Daniel M. Czamanske, Jr. (MSB #10812)
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ATTORNEY FOR DEFENDANT, MO TUPELO, LLC

And Via U.S. Mail upon:

Hon. Camille Roberts Dulaney
Lee County Circuit Clerk
P.O. Box 762
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Phone: (662) 432-2300
Facsimile: (662) 680-6079
Email: croberts@co.lee.ms.us

THIS, the 3rd day of December, 2021.

BY: /s/*Michael E. Phillips*
Michael E. Phillips, Esq.